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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,485	12/15/2003	Lubomyr M. Cymbalista	225593	3816
23460	7590	08/25/2005	EXAMINER	
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6780			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,485

Applicant(s)

CYMBALISTY, LUBOMYR M.

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) 16-21 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 16-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 15 December 2003.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to static mixing conduit, classified in class 366, subclass 341.
- II. Claims 16-21, drawn to a method of connecting a conduit to a fluid processing system, classified in class 137, subclass 15.01.

The inventions are distinct, each from the other because of the following reasons:

- 2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus could be used without the step of connecting the conduit to the recited system. For example, material could be poured into the conduit and discharge, without the conduit being connected to the recited system.
- 3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Art Unit: 1723

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with James B. Muskal on 16 August 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed (US 249,547). Regarding claim 1, Reed ('547) discloses an undulating conduit (see Fig. 1). Regarding claim 2, said undulating conduit has a generally helical configuration (see Fig. 1; lines 14-15). Regarding claim 3, said undulating conduit has a generally sinusoidal undulation (see Fig. 1). Regarding claim 4, said conduit has a geometric cross section (see Figs. 1 and 3). Regarding claim 5, said conduit has a generally round cross section (see Fig. 3). Regarding claim 6, the amplitude of undulation is less than the hydraulic diameter of the conduit (see Figs. 1 and 3; lines 35-42). Regarding claims 12 and 15, the top portion has undulations (see Fig. 1).

Art Unit: 1723

Regarding claim 13, said conduit is curved and generally round in cross-section (see Figs. 1 and 3). Claim 14 fails to positively recite any further structural limitation.

9. Claims 1-6 and 8-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Nordling et al. (US 1,315,853). Regarding claim 1, Nordling ('853) discloses an undulating conduit (see page 1, lines 1-38; Figs. 7-9). Regarding claim 2, said undulating conduit has a generally helical configuration (see page 1, lines 1-38). Regarding claim 3, said undulating conduit has a generally sinusoidal undulation (see page 1, lines 1-38). Regarding claim 4, said conduit has an internally geometric cross-section (see drawing). Regarding claim 5, said undulating conduit has a generally round internal cross-section (see Fig. 7). Regarding claim 6, the amplitude of said undulation is less than the hydraulic diameter of the conduit (see Fig. 7). Regarding claim 8, said undulating conduit has a generally helical undulation of non-zero helical pitch and zero helical radius (see embodiments of Figs. 8 and 9). Regarding claim 9, said undulating conduit has an internally geometric cross-section (see Figs. 8 and 9). Regarding claim 10, said conduit has an oval cross section (see Fig. 8). Regarding claim 11, said undulating conduit has a polygonal cross-section (see Fig. 9). Regarding claims 12 and 15 undulations are formed on the top portion (see embodiments of Figs. 7-9). Regarding claim 13, said conduit is curved and generally round in cross section (see Fig. 7). Claim 14 fails to positively recite any further structural limitation.

10. Claims 1, 2, 4, 5, 7, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Garrand (US 538,194). Regarding claim 1, Garrand ('194) discloses an undulating conduit (A). Regarding claim 2, the conduit is helical (see Figs. 1 and 2).

Art Unit: 1723

Regarding claim 4, the conduit has an internally geometric cross section (see Fig. 1).

Regarding claim 5, the conduit has a generally round cross section (see Fig. 1).

Regarding claim 7, the amplitude of said undulation is greater than the hydraulic diameter of the conduit (see Fig. 1). Regarding claim 13, said conduit is curved and generally round in cross section (see Fig. 1). Claim 14 fails to positively recite any further structural limitation.

Double Patenting

11. Claims 1, 2, 4, 5, 7, and 12-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,896,007. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of US Patent No. 6,896,007 includes all the limitations of each of these claims.

Conclusion


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David L. Sorkin
Primary Examiner
Art Unit 1723

DLS